

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ELIZABETH GARCIA,

Plaintiff,

v.

FORSTER & GARBUS LLP,

Defendant.

COMPLAINT
5:16-cv-520 (GLS/DEP)

Plaintiff, by and through their attorney, Gary J. Pieples, Esq., as and for her Complaint against Defendants, allege as follows:

PRELIMINARY STATEMENT

This action arises out of a previous civil action brought by Merrick Bank, through their attorneys Forster & Garbus LLP, against Elizabeth Garcia in Syracuse City Court (Exhibit A). The case was dismissed under CPLR 3211 and UCCA § 2311 as Merrick Bank failed to demonstrate the required contacts necessary for this action to be brought in Syracuse City Court (Exhibit B).

PARTIES VENUE AND JURISDICTION

1. Plaintiff Elizabeth Garcia is a resident of Van Buren, New York.
2. Defendant Forster & Garbus LLP is a law firm with its primary place of business in 60 Motor Parkway, Commack, New York 11725.
3. Merrick Bank is a client of Forster & Garbus LLP and a corporation with its primary place of business in 10705 South Gateway City, South Jordan, Utah 84095.
4. Venue is properly situated in this Court because this is a civil action brought under federal law with jurisdiction granted by 28 U.S.C. § 1331.

5. Plaintiff seeks statutory damages and any associated attorney's fees pursuant to 15 U.S.C. §§ 1692k (a)(2)(A), 1692k (a)(3) for violation of 15 U.S.C. § 1692i (a)(2)(B).

FACTUAL ALLEGATIONS

6. Forster & Garbus LLP represented Merrick Bank and filed a civil action for them in Syracuse City Court against Elizabeth Garcia for an alleged credit card debt (Exhibit A: Merrick Bank v. Elizabeth Garcia, Index No.: 2015-3084CV).
7. A Motion to Dismiss was filed pursuant to UCCA § 1002 and 15 U.S.C. § 1692i (a)(2)(B) in response to this civil action.
8. The Motion to Dismiss established that Elizabeth Garcia lived in Van Buren, which is not within the city of Syracuse or a town contiguous to the city of Syracuse.
9. The Motion to Dismiss further established that Elizabeth Garcia did not have regular employment or a place of business within the city of Syracuse.
10. Merrick Bank and Forster & Garbus LLP never responded to the Motion to Dismiss.
11. On or about December 1, 2015, the Motion to Dismiss is granted by Syracuse City Court and the civil action is dismissed. (Copy of decision is attached as Exhibit B).

FIRST CAUSE OF ACTION

FAIR DEBT COLLECTION PRACTICE ACT

12. Plaintiff repeats and re-allege in this paragraph all of the allegations set forth in paragraphs 1 through 11 above.
13. By granting the Motion to Dismiss, the Syracuse City Court found they did not have jurisdiction over Ms. Garcia or the case. (Exhibit. B).
14. The alleged debt of Ms. Garcia claimed in Exhibit A was incurred for personal, family, or household services and is defined as consumer debt by 15 U.S.C. § 1692a (5).

15. In representing Merrick Bank, Forster & Garbus LLP is a third-party debt collector as defined under 15 U.S.C. § 1692a (6).
16. By bringing a legal action on a consumer debt in the incorrect judicial district, the Defendant, Forster & Garbus LLP as a third-party debt collector violated 15 U.S.C. § 1692i (a)(2)(B).
17. A violation of 15 U.S.C. § 1692i (a)(2)(B) by Defendant grants Plaintiff statutory damages in accordance with 15 U.S.C. § 1692k (a)(2)(A) along with reasonable attorney's fees in accordance with 15 U.S.C. § 1692k (a)(3).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands and prays that judgment be entered in their favor and against Merrick Bank for:

- a. Statutory damages pursuant to 15 U.S.C. § 1692k (a)(2)(A).
- b. Attorney's fees pursuant to 15 U.S.C. § 1692k (a)(3)
- c. For such further relief as may be just and proper.

Respectfully Submitted,



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